

Sprint

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Re: Availability of INTELSAT Space Segment Capacity to Users and Service
Providers Seeking to Access INTELSAT Directly (IB Docket No. 00-91)

Dear Ms. Salas:

On April 6, 2001, the International Bureau's Satellite Policy Branch issued a Public Notice¹ requesting comment on Lockheed Martin Global Telecommunications' (Comsat's) request that the Commission terminate its proceeding in IB Docket No. 00-91, carrying out the Commission's implementation of Section 641(b) of the Open-Market Reorganization for the Betterment of International Telecommunications Act (Orbit Act).²

Sprint Communications, L.P. (Sprint) hereby submits its comments on Comsat's proposal and on its progress in ongoing negotiations with Comsat for direct access to INTELSAT space segment capacity. Sprint submits that it is far too early for the Commission to terminate the relevant proceeding due to the long term nature of many of Comsat's contracts, as well as Comsat's demonstrated reluctance to negotiate the transfer of circuits to enable direct access to INTELSAT space segment.

As detailed in Comsat's March 13 submission,³ representatives of Sprint attempted to negotiate with Comsat for the transfer of existing space segment capacity to allow Sprint direct access to INTELSAT space segment. Donald Smith, Sprint Satellite Facilities Manager, International Service Integration, sent an email on February 2nd, in which he detailed Sprint proposals for portability of INTELSAT space segment. (See attached declaration of Donald B. Smith). Comsat's cooperation in this process is essential, as it is not clear what space segment capacity will be available that could appropriately match

¹ Report No. SPB-166

² Pub. L. 106-180 § 64, 114 Stat. 48 (2000).

³ Letter to Ms. Magalie Roman Salas, Secretary, FCC, from Howard D. Polsky, Vice President and General Counsel, Lockheed Martin Global Telecommunications, March 13, 2001.

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Sprint's foreign correspondents' capabilities when Sprint's long term commitments with Comsat terminate over the next several years.

Alice Witt, Comsat Account Manager, responded to Sprint's email on February 13th, stating that "since portability entails the forced transfer of our INTELSAT capacity, which is prohibited by the ORBIT Act, we see no reason to discuss it as part of the commercial negotiations." Although Ms. Witt's email addressed other issues, Sprint's goal of transferring existing INTELSAT capacity, using currently assigned frequencies, was not otherwise addressed.

The Comsat email presumably refers to Section 641(c) of the ORBIT Act, which states "[n]othing in this section shall be construed to permit the abrogation or modification of any contract." Comsat's position is particularly troublesome to Sprint, because none of Sprint's proposals would require the abrogation or modification of any contract Sprint has with Comsat. Negotiations have not continued due to Sprint's assessment that an agreement with Comsat on this matter is extremely unlikely.

As Comsat controls the capacity that would allow Sprint to maintain its existing matching circuits with foreign correspondents after expiration of Sprint's contracts with Comsat, Comsat's refusal to negotiate arrangements for portability leave Sprint at a significant disadvantage. It is currently in the position of having to choose between renewing its contract with Comsat at significant markups over INTELSAT rates under direct access or persuading its correspondent partners to undertake the costly and administratively burdensome task of seeking new capacity on circuits that could match newly acquired direct-access INTELSAT capacity. We note that the Commission specifically addressed this issue and stated its conclusion that "U.S. customers in the satellite services market are not able to enjoy the full benefits of competition that might otherwise be generated by direct access"⁴ The Commission based this conclusion on the lack of suitable available capacity, along with "procedural complications" in obtaining suitable matching capacity to available direct access circuits.⁵

Sprint will continue to explore its options for needed satellite capacity with Comsat and other parties. However, given the long-term nature of Comsat's contracts with Sprint (the majority of Sprint's contracts expire in late 2003), Comsat's refusal to negotiate arrangements for portability, and the Commission's own conclusions in this area, Sprint believes that it is far too early for the Commission to consider terminating this proceeding.

The purpose of the ORBIT Act, as enacted by Congress is "to promote a fully competitive global market for satellite communication services for the benefit of consumers and providers of satellite services and equipment by fully privatizing the intergovernmental satellite organizations, INTELSAT and Inmarsat."⁶ Comsat continues

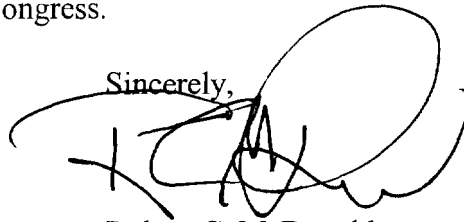
⁴ *Availability of INTELSAT Space Segment Capacity*, IB Docket No. 00-91, Report and Order, FCC 00-340 at 16 (rel. September 19, 2000).

⁵ *Id.*

⁶ P.L. 106-180, § 2, 114 Stat. 48 (2000), codified at 47 U.S.C. § 765(c).

to possess considerable ability to impede the development of a “fully competitive global market” for satellite communication services, and Commission action may be warranted in specific circumstances in the future to ensure the legislative goals of the ORBIT Act are fulfilled. Sprint therefore respectfully requests that the Commission continue to remain actively engaged in this proceeding in order to ensure the fulfillment of the procompetitive legislative goals of Congress.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. McDonald', with a large, loopy flourish extending from the end of the signature.

Robert C. McDonald
Senior Attorney
Sprint Communications L.P.

DECLARATION OF DONALD B. SMITH

As Manager, Satellite Planning & Capacity Management for Sprint International's Global Facilities Planning and Implementation, I am the primary interface and point of contact within our organization with responsibility for both the LMGT and Intelsat contracts. I am also responsible for overall satellite facility planning, engineering and acquisition. In that capacity, I communicate regularly with LMGT representatives to discuss a variety of issues, ranging from operational and technical to management of our LMGT contract.

Over the past four years, Sprint has tried unsuccessfully to renegotiate our contract with COMSAT/LMGT. Sprint's requirements have included:

- A reduction in service rates necessary to be competitive with other users of international satellite services in the industry. This is partially due to recent regulatory changes allowing users that are not bound to LMGT by long term commitments to obtain service at lower rates than those that must maintain existing contracts.
- Having the flexibility to trade our existing long-term commitments with LMGT between IDR/TDMA and IBS. This is due to the changing nature of services carried on satellite from primarily switched voice (IDR service) to data services (IBS). In this instance, even though we may already have idle IDR/TDMA facilities under contract with LMGT, we are forced to acquire additional IBS facilities to provide service to our customers.

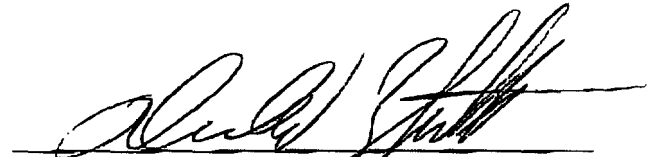
LMGT continues to insist that for any negotiation to be successful, Sprint would have to agree to additional long-term circuit commitments above and beyond Sprint's existing contract. Sprint cannot commit to this condition because we are not presently growing our satellite service, due in large part to being locked into higher space-segment rates. In addition, quality concerns surrounding IP over satellite are impacting Sprint's ability to forecast growth in this area. As a result, Sprint is not presently growing its' satellite usage and therefore cannot commit to additional long-term circuits with LMGT at this time. Sprint also cannot establish lower cost service directly with Intelsat, because we are required to maintain our existing contracts with LMGT. Any new service requirement or expiring existing contract is used to replace our outstanding over-commitments with LMGT.

Sprint requested a meeting with LMGT on January 23, 2001 to conduct a brainstorming session on Portability at the time of expiration of our existing obligations with LMGT. Sprint is concerned with the uncertainty of satellite capacity availability when a large part of our existing contracts expire in November, 2003. The intent of this meeting was to obtain an understanding of LMGT's position and willingness to assist with portability when our commitments with them expire. Additionally, if any new commercial ideas were brought forward at the meeting, these would be evaluated for discussion at a follow-up meeting with appropriate personnel from LMGT and Sprint. It was anticipated that a

follow-up meeting would be held approximately 1 month later in conjunction with LMGT's annual meeting with Sprint management.

Sprint asked if LMGT would agree to transfer its obligation with Intelsat to Sprint for the remaining term of their contract when our contract with LMGT expires. LMGT made it very clear in this meeting that they did not consider it in LMGT's best interest to give up capacity and requested that we send our request to them in writing. (Note, our E-mail request and LMGT's response is attached). Also, LMGT was unwilling to assist at the point where both of our contracts expire at the same time, indicating that there is a low probability of that happening. This reluctance of LMGT to assist and considering the uncertainty of available capacity in later years stresses the necessity of maintaining FCC involvement with Portability and addressing the issue of matched orders for transfer of service to Intelsat.

While Sprint's management is willing to further discuss the matter with LMGT at any time, a review by Sprint management of the results of the meeting and the response from LMGT have led Sprint to understand that an agreement with LMGT on this matter as it currently exists is highly unlikely. At this time, no follow-up meeting is scheduled.


Donald B. Smith

From: Alice [Alice.Witt@comsat.com]

To: Don.B.Smith
Cc: alison.clark; rich.young; Joanne.Tanner
Subject: Re:Portability (Retransmission)
Date: 02/13/2001 4:15 p.m.

Dear Don,

Thanks for your e-mail of February 2, below.

As you know, we have had several negotiations over the past few years. Most recently, in the spring of 2000, we presented a proposal that offered discounted renewal rates in connection with additional contract commitments. On behalf of Sprint, Rich declined that proposal and postponed any further discussions. At the time, Sprint was unable to forecast its satellite requirements, but we understood that you expected your overall usage to decline, although a base of circuits would be needed for the foreseeable future. It seems to us that this is still the case, but we would appreciate your view of Sprint's expected satellite usage over the next few years. This would better enable us to have a constructive commercial dialogue.

In your message, you asked whether we would assist you in moving to INTELSAT by means of a "paper transfer" in cases where your lease commitments with us are expiring and you still have need for the capacity. Typically, we would not simply release capacity that we have under contract with INTELSAT because such capacity has significant commercial value and our principal business is reselling that capacity. We are open to discussing a business proposal, but we do not feel that there is a commercial element in the procedure you have suggested.

Nevertheless, in response to your message, we have reviewed all of your current IDR, IBS and TDMA circuits. We find that about 10% of these circuits (i.e., 298 64 kbps equivalent circuits, located in a total of 14 carriers) are due to expire in the next 13 months. If in fact your overall usage is declining, it seems likely that you do not need to keep all of those circuits; however, for purposes of this analysis we have assumed that you do. For nine of those 14 carriers (representing 160 64 Kbps channels), there is alternate capacity currently available from INTELSAT on the same satellite and in many of those cases capacity is available on the very same transponder.

Thus, in the majority of cases where your leases with us are expiring, there is sufficient capacity available to enable you to move those circuits to alternate capacity if you so choose. However, it would seem far more advantageous to use the global flexibility already afforded to you under our contract. You can simply transfer the remaining contract obligation on the non-expiring circuits that you no longer need to the expiring circuits that you do need. The global flexibility feature of your contract offers not only the benefit of moving circuits from country to country and region to region but also the ability to better manage your expirations and deactivations.

Whether or not you choose to take advantage of this option, please be assured that both our operations and sales personnel are available to work with you to manage your circuit commitments. As you know, we already have a day-to-day working relationship with respect to the circuits that you currently have with us. Expansion, contraction and relocation are already part of our daily dialogue.

We also received your subsequent e-mail of February 5 and will forward separately the termination cost information that you requested.

As an aside, I feel that I should address the reference in your message to "portability." I had asked for your views on how we might meet your requirements for INTELSAT capacity through commercial negotiations, as contemplated by the FCC's September 2000 Report and Order in IB Docket No. 00-91. However, since portability entails the forced transfer of our INTELSAT capacity, which is prohibited by the ORBIT Act, we see no reason to discuss it as part of commercial negotiations.

Joanne and I are available to meet with you this month in Kansas City, as proposed. If during that discussion you would like to discuss renewing circuits with us, we would be happy to do so. However, your input as to future requirements would aid us greatly in preparing for such a discussion. As in the past, we are prepared to offer substantial rate reductions in exchange for volume and term commitments. However, if you wish to continue renewing on a circuit-by-circuit basis, we will work with you as we have in the past.

Whatever you decide, we appreciate Sprint's business and we value our relationship. We look forward to hearing from you soon.

Best regards, Alice
301-214-3421

Reply Separator

Subject: Portability (Retransmission)
Author: Don.B.Smith@mail.sprint.com
Date: 02/02/2001 1:14 PM

Alice,

Retransmission, hopefully easier to read.

As you requested during our brainstorming meeting here are our ideas on portability.

Would LMGT assist us in moving to INTELSAT under the following conditions:

When our LTC with LMTG expires and we still require the satellite facility but can not use it to replace an over commitment and:

1. LMGT has a remaining obligation with INTELSAT, would LMGT simply paper transfer there remaining LTC with INTELSAT to Sprint allowing Sprint to continue paying the existing INTELSAT rate (Plus 5.58% Surcharge) for the remaining term?
2. LMGT's LTC with INTELSAT expires on the same facility, would LMGT allow Sprint to maintain the satellite facility with the same satellite assignments if we ordered directly with INTELSAT (envisioned as a paper transfer)?
3. LMGT has the facility assigned within one of there

transponder leases, would LMGT agree to place the sprint assignment at the edge of their lease (frequency change) and transfer that portion of the lease obligation with INTELSAT to Sprint (envisioned as a paper transfer)?

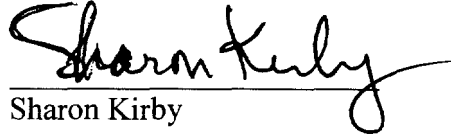
In response to LMGT's expressed interest in maintaining Sprint as a customer, would LMGT please provide a renewal price matrix on a per carrier basis (without Sprint maintaining any number of commitments above what exists in our existing contracts and the specific proposed renewal). Please provide these matrixes based on both a carrier basis (like our existing contract) and on a per 64KB/s channel basis (pool of 64KB/s circuits), also please provide these matrixes with the ability to trade renewed IBS/IDR/TDMA circuits.

As our next planned meeting is mid February, we would appreciate your reply no later than the 7th of February so that internal review can be completed prior to our meeting.

Regards,
Don Smith

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document in IB Docket No. 00-91 was sent by Hand Delivery or United States first-class mail, postage prepaid, on this 23rd day of April, 2001, to the following parties .


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